

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 ANTHONY L. BARNEY, LTD.

4 Petitioner

5
6 vs.

7 THE EIGHTH JUDICIAL DISTRICT
8 COURT OF THE STATE OF NEVADA,
9 IN AND FOR THE COUNTY OF CLARK,
10 and JUDGE ELIZABETH GONZALEZ,
11 JUDGE VINCENT OCHOA, JUDGE
12 GLORIA STURMAN, AND JUDGE
13 WILLIAM POTTER

14 Respondent

15
16 and

17 IN RE GUARDIANSHIP OF GARRETT
18 DOSCH; IN THE MATTER OF THE
19 MCGUIRE FAMILY TRUST; IN THE
20 MATTER OF THE GUARDIANSHIP OF
21 GIULIAN GRASSO, PROTECTED
22 PERSON

23 Real Parties in Interest.

District Court Case Nos. 99-G-0202357, 17-090719-5, G-16-043377-A
Electronically Filed May 30 2019 04:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No.

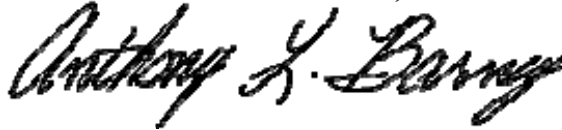
24 **PETITION FOR WRIT OF MANDAMUS**

25 The law office of Anthony L. Barney, Ltd. (“ALB, Ltd.”), hereby files its
26 Petition for Writ of Mandamus to correct due process violations, an error in the
27 interpretation of the judicial canons, and improper advocacy on the part of the
28 Eighth Judicial District Court (“EJDC”) to allow a stricken order to remain on

1 another court record and allow the entry of a recusal order filed *sua sponte* by an
2 EJDC judge that violates due process and the due process safeguard contained in
3 Revised Code of Judicial Conduct (“RCJC”) 2.11(C). There is not a plain, speedy
4 and adequate remedy in the ordinary course of law and a writ is the only remedy to
5 correct the errors of law.
6
7

8 DATED this 30th day of May 2019.

9
10 Respectfully Submitted,
11 ANTHONY L. BARNEY, LTD.

12 

13 Anthony L. Barney, Esq.
14 Nevada Bar No. 8366
15 3317 W. Charleston Blvd., Suite B
16 Las Vegas, NV 89102
17 Telephone: (702) 438-7878
18 Facsimile: (702) 259-1116
19 office@anthonybarney.com
20 *Attorney for Anthony L. Barney, Ltd.*
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1 **NRAP 26.1 DISCLOSURE**

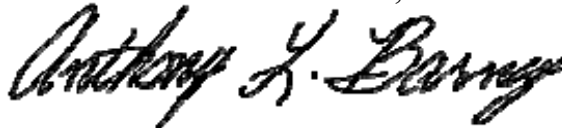
2
3 The undersigned counsel of record certifies that the following are persons
4 and entities as described in NRAP

5
6 26.1(a), and must be disclosed. These representations are made in order that
7 the judges of this court may evaluate possible disqualification or recusal:

8 Anthony L. Barney, Ltd.
9 President, Owner and Shareholder: Anthony L. Barney, Esq.

10 Dated this 30th day of May, 2019.

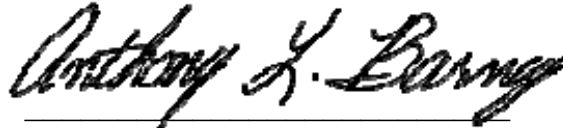
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12 ANTHONY L. BARNEY, LTD.

13 

14
15 Anthony L. Barney, Esq.
16 Nevada Bar No. 8366
17 3317 W. Charleston Blvd., Suite B
18 Las Vegas, NV 89102
19 Telephone: (702) 438-7878
20 Facsimile: (702) 259-1116
21 office@anthonybarney.com
22 *Attorney for Anthony L. Barney, Ltd.*

1 DATED this 30th day of May, 2019.

2 ANTHONY L. BARNEY, LTD.

3 

4 Anthony L. Barney, Esq.

5 Nevada Bar No. 8366

6 3317 W. Charleston Blvd., Suite B

7 Las Vegas, NV 89102

8 *Attorney for Anthony L. Barney, Ltd.*

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CERTIFICATE OF COMPLIANCE

1
2
3 1. We hereby certify that this brief complies with the formatting requirements of
4 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type
5 style requirements of NRAP 32(a)(6) because this brief has been prepared in
6 a proportionally spaced typeface using Microsoft Word in Times New
7 Roman 14 pt. font.
8

9
10 2. We further certify that this brief complies with the page- or type-volume
11 limitations of NRAP 32(a)(7) because, excluding the parts of the brief
12 exempted by NRAP 32(a)(7)(C), it does not exceed thirty pages.
13

14 3. Finally, we hereby certify that we have read this appellate brief, and to the
15 best of my knowledge, information, and belief, it is not frivolous or
16 interposed for any improper purpose. We further certify that this brief
17 complies with all applicable Nevada Rules of Appellate Procedure, in
18 particular NRAP 28(e)(1), which requires every assertion in the brief
19 regarding matters in the record to be supported by a reference to the page
20 and volume number, if any, of the transcript or appendix where the matter
21 relied on is to be found.
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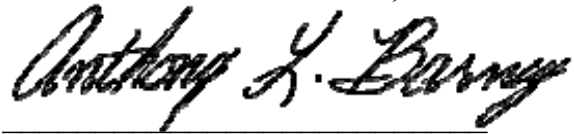
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1 4. We understand that we may be subject to sanctions in the event that the
2 accompanying brief is not in conformity with the requirements of the
3 Nevada Rules of Appellate Procedure.
4

5 Dated this 30th day of May, 2019.
6

7
8 Respectfully Submitted,
9 ANTHONY L. BARNEY, LTD.

10 

11 Anthony L. Barney, Esq.
12 Nevada Bar No. 8366
13 3317 W. Charleston Blvd., Suite B
14 Las Vegas, NV 89102
15 Telephone: (702) 438-7878
16 Facsimile: (702) 259-1116
17 office@anthonybarney.com
18 *Attorney for Anthony L. Barney, Ltd.*
19
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C. The Grasso stricken order and Recusal Order is based upon false and erroneous statements and to allow it to remain on multiple records is a clear violation of Anthony L. Barney, Ltd’s due process rights, because of the lack of notice or the opportunity to be heard and rebut the false and erroneous statements.....20

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1 **RELIEF SOUGHT**

2 Petitioner respectfully requests that this Court compel the EJDC to reverse
3 its Orders entered on June 12, 2018 and on June 13, 2018 (“June Orders”)¹ in Case
4 #99-G-0202357 and P-17-090719-T respectively, reverse the minute order from
5 the March 28, 2018 hearing in Case # G-16-043377-A², strike the Grasso stricken
6 order from Case # P-17-090719-T, and strike the Recusal Order in Case Nos. 99-
7 G-0202357, P-17-090719-T, and G-16-043377-A upon the basis of clear bias and
8 prejudice, in violation of RCJC 2.11(C), and due to the erroneous, false and/or
9 disparaging statements impugning the law firm of ALB, Ltd.³ This relief is sought
10 because of its violation of constitutional rights as a result of the lack of procedural
11 due process afforded ALB, Ltd., the lack of opposition to ALB, Ltd.’s request to
12 strike the offending language in Case # 99-G-0202357 and #P-17-090719-T, and
13 the EDJC’s erroneous reading and application of the relevant judicial canons.
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20 ¹ See Petitioner’s Appendix (“PETAPP”) VIII:1630-1632,1636-1638,1643-1649.

21 ² No written order was provided from the hearing in case # G-16-043377-A and it
22 appears it will not be provided in the future. See PETAPP VIII:1704-1706 wherein
23 the written order was requested at the Grasso hearing on September 12, 2018, but
24 the court indicated that it had redacted the Recusal Order pursuant to its minute
25 order and thus there would not be a written order.

26 ³ Please note, ALB, Ltd., is not challenging the recusal, because it believes that all
27 litigants are entitled to an unbiased judge and Judge Potter can obviously no longer
28 be unbiased or impartial regarding ALB, Ltd. ALB, Ltd. requests that the *Grasso*
stricken order and Recusal Order be removed from the court records because it was
not afforded notice or procedural due process in violation of its rights under the US
Constitution.

1 **ISSUES PRESENTED**

2 There are four issues presented in this writ:

- 3
- 4 1. Did Judge Elizabeth Gonzalez err when she denied ALB, Ltd.’s request to
- 5 remove a stricken order from one case from the record of another case which
- 6 did not afford ALB, Ltd., notice, the opportunity to be heard and defend
- 7 itself against the false and erroneous contents of the stricken order in the
- 8 new case?
- 9
- 10
- 11 2. Were the due process rights of ALB, Ltd. and its clients unlawfully infringed
- 12 when Judge Potter placed, without notice or an opportunity to be heard, on
- 13 various court records the Recusal Order based upon bias and prejudice
- 14 (which included false, erroneous, and disparaging statements impugning
- 15 ALB, Ltd.), and which was in violation of Revised Code of Judicial Conduct
- 16 2.11(C)?
- 17
- 18
- 19 3. Did Judge Elizabeth Gonzalez err when she denied ALB, Ltd.’s Motions to
- 20 Strike District Court Judge William Potter’s Erroneous and Disparaging
- 21 Language in the Order Dated February 9, 2018 (“Motion to Strike”) when no
- 22 party objected to the Motion to Strike and when she further ruled that Judge
- 23 Potter was able to provide his basis for recusal under Revised Code of
- 24 Judicial Conduct 2.11 (A)(1) when the Revised Code of Judicial Conduct
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1 2.11 (C) specifically prohibits such a basis when a judge recuses for bias and
2 prejudice?
3

4 4. Did Judge Gloria Sturman err when she allowed the Recusal Order to remain
5 on the court record when she ruled that Judge Potter was able to provide his
6 basis for recusal under Revised Code of Judicial Conduct 2.11 (A)(1) when
7 the Revised Code of Judicial Conduct 2.11(C) specifically prohibits such a
8 basis when a judge recuses for bias and prejudice?
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1 **I. STATEMENT OF FACTS**

2 ALB, Ltd., did **not** request the recusal of Judge Potter from any of its cases.
3
4 Judge Potter’s filing of the Recusal Order on various court records came as a
5 surprise to all litigants. The Recusal Order is being included in the Appendices as
6 “proposed sealed document”⁴, because it is currently being requested to be stricken
7 from all court records and Appellant does not desire to place it on an additional
8 court record.
9
10

11 ALB, Ltd., filed its Motion to Strike the Recusal Order in all three cases (99-
12 G-0202357, P-17-090719-T, and G-16-043377-A) because the Recusal Order
13 contained the following false, erroneous, and or disparaging statements, impugning
14 the law firm of ALB, Ltd., in the second paragraph on Page 1 of the order:
15

16 1. The Court stated: “This Court has three separate cases with the Barney law
17 firm.” **Explanation of how statement is false:** ALB, Ltd., had five cases in
18 front of Judge William Potter (“Judge Potter”) at the time the Recusal Order
19 was entered (not three), which are discussed in more detail below.
20

21 2. The Court stated: “Each of these cases has had at least one very heated
22 exchange between attorneys for the aforementioned firm and the Court.”
23

24 **Explanation of how statement is false:** While this is subjective view, it
25
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⁴ See PETAPP IV:800-803;804-806;807-810 (*submitted under proposed seal*)

1 appears that only two of the five cases involved exchanges between Tiffany
2 S. Barney, Esq. and Judge Potter when Judge Potter became “heated.”
3

- 4 3. The Court stated: “This Court has openly questioned the tactics and practices
5 of the firm and one instance issued an Order accusing the firm of either
6 fraud or negligence.” **Explanation of how last part of statement is false:**

7
8 In one of the five cases, Judge Potter struck his own order (explained in
9 more detail below under the *Grasso* case) which contained only one of the
10 referenced accusations (fraud) and the order was stricken because it was
11 false as to the Court’s unsubstantiated allegation of fraud. Negligence was
12 never mentioned or alleged by Judge Potter in an order relating to the firm of
13 ALB, Ltd. Judge Potter, however, has now placed back on the record a prior
14 false accusation and added a claim of “negligence”, of which he never
15 accused ALB, Ltd.
16
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- 19 4. The Court stated: “Due to the extremely litigious turn each of these cases has
20 taken this Court is very reluctant to recuse, but after deep reflection it has
21 become clear that this Court cannot hear these matters in an unbiased
22 manner.” **Explanation of how first part of statement is false:** It is unclear
23 what would constitute a “litigious case,” because not all of the cases ALB,
24 Ltd. had in front of Judge Potter were subjectively deemed litigious as
25 further explained below.
26
27
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1 To understand the possible reason for which Judge Potter recused himself for bias
2 and why the above statements are false, erroneous and/or disparaging, it is
3 necessary to provide a review of the five cases that were before Judge Potter at the
4 time the Recusal Order was issued:
5

6
7 ***A. The Grasso Case and the Grasso stricken order were likely the major***
8 ***cause of Judge Potter’s entry of the Recusal Order.***

9 In the Matter of the Guardianship of Giulian Grasso (“Grasso Case”): G-16-
10 043377-A, the Guardian of the Person, LaDonna Grasso (“Ladonna”), was
11 represented by ALB, Ltd. Ladonna and Tiffany S. Barney, Esq. uncovered
12 conversion (theft) by the Guardian of the Estate, Jeffrey Grasso.⁵ Jeffrey Grasso
13 was represented by Mark Hafer, Esq., (“Mr. Hafer”) who was later disqualified as
14 his counsel because Mr. Hafer had, in fact, represented Giulian Grasso (“Giulian”)
15 as the real party in interest in a Medical Malpractice Action and then represented
16 Jeffrey Grasso against Giulian in the *Grasso* case.⁶ Allegations of theft and
17 conversion by Jeffrey Grasso were brought to Judge Potter’s attention, as well as
18 the fact that Mr. Hafer should have been disqualified because of the conflict that
19 existed between Giulian and Jeffrey, who were both Mr. Hafer’s clients.⁷
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27 ⁵ See PETAPP I:3-41.

28 ⁶ See PETAPP VIII:1729-1733

⁷ See PETAPP VIII:1729-1733

1 Judge Potter seemed irritated toward LaDonna and her attorneys of ALB,
2 Ltd., and later issued an erroneous, threatening and disparaging order (referenced
3 above), which was later stricken and will be referred to throughout this Writ as the
4 “Grasso stricken order”.⁸ Because Judge Potter was unwilling to allow the civil
5 claims to proceed for conversion and the request for double damages, Judge Potter
6 encouraged LaDonna to provide evidence of the conversion or theft from the
7 guardianship estate to law enforcement authorities. After the conversion and theft
8 were exposed Jeffrey Grasso voluntarily resigned as guardian and LaDonna was
9 appointed as Guardian over Giulian’s Person and Estate.⁹
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14 Pursuant to Judge Potter’s instruction, LaDonna gave the available
15 information that had been uncovered regarding the theft of money from Giulian
16 and his estate to the Henderson Police Department (“HPD”) for possible restitution
17 of the stolen funds. After the HPD performed their investigation, the Clark County
18 District Attorney filed a fourteen (14) felony count indictment against Jeffrey
19 Grasso for theft, exploitation, burglary, forgery and offering a false instrument for
20 public filing, based upon the information obtained through the litigation discovery
21 efforts of the law firm of ALB, Ltd.¹⁰ Mr. Hafer was also included in the narrative
22 of the indictment as having presented Jeffrey Grasso’s false statements upon the
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28 ⁸ See PETAPP I:62-68 (*submitted under proposed seal*).

⁹ See PETAPP I:69-89.

1 court record.¹¹ Jeffrey Grasso was also jailed for an act of terrorism and resisting a
2 public officer.¹² On July 18, 2018, Jeffrey Grasso pled guilty to one felony count
3 of exploitation of an older/vulnerable person in Case #C-18-329127-1 for
4 exploiting his handicapped son, Giulian.¹³ In his plea agreement, he also agreed
5 to restitution, not to seek custody or guardianship of Giulian and that he must
6 continue mental health counseling for an indeterminate period of time.¹⁴ He was
7 adjudged guilty of intimidating a public officer in his criminal case #C-18-333123-
8
9
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11 1.¹⁵

12 When Judge Potter received the *Grasso* case, he engaged in heated
13 arguments with Tiffany S. Barney, Esq., unwilling to allow her to speak and
14 thwarting her efforts to aid the Guardian in performing her duties to protect Giulian
15 and his estate. Once Judge Potter's Recusal Order was filed on February 9, 2018,
16 Judge Gloria Sturman was able to afford protections to Giulian, including,
17 disqualifying Mr. Hafer, who was acting in a conflict of interest against his former
18 client Giulian, and allowing the proper administration of the guardianship estate.
19 She also provided her oral directive to redact most of the false and disparaging
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25 ¹⁰ See PETAPP III:572-580.

26 ¹¹ *Id.*

27 ¹² See PETAPP VIII:1639-1642.

28 ¹³ See PETAPP VIII:1654-1656.

¹⁴ *Id.*

¹⁵ See PETAPP VIII:1713.

1 language from the Recusal Order and seal the original, but, unfortunately, she
2 misinterpreted the judicial canons in doing so.¹⁶
3

4 A written order was provided to Judge Sturman as a result of the March 28,
5 2018 hearing, but was never signed. On September 12, 2018, when asked if a
6 written order would be provided as to her ruling regarding the Recusal Order, it
7 was made clear that a written order would not be provided because the original
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11 ¹⁶ See PETAPP VI:1235-1267 at specifically the following:

- 12 1. PETAPP VI:1248, lines 21-23 “And they might want to know what were
13 Judge Potter’s reasons, because he has – he has to state reasons in order to
14 recuse under Canon 2.11”
- 15 2. PETAPP VI:1252, lines 19-20 “I have to have in the record, a basis, under
16 Canon 2.11”
- 17 3. PETAPP VI:1253, lines 3-4, 7-9 “You have to make a record on why you’re
18 recusing...The judge has made a public record of why this judge – it’s a
19 matter of the canons, the judicial canons. He’s made record on why he can’t
20 preside.”
- 21 4. PETAPP VI:1253, line 12 “We’re trying to just meet the requirements of
22 2.11”
- 23 5. PETAPP VI:1256, lines 21-23 “You have to know the grounds for a judge
24 under Rule 2.0 Canon. It’s a Canon, Canon 2.11.”
- 25 6. PETAPP VI:1257, lines 11-12, 21-22 “There needs to be some record of
26 why a judge took this step because it’s an ethical obligation to keep a
27 case...he has to state a reason for recusing.”
- 28 7. PETAPP VI:1258, lines 24-25 and VI:1259, line 1 “...he states ‘I am – I
don’t feel I could be unbiased.’ He states that in that sentence and I think we
need that in a record.”
8. PETAPP VI:1259, lines 24-25 “...judges are really doing what they’re
supposed to do and give a reason for recusal, we’ve got a reason.
9. PETAPP VI:1260, lines 3-4 “You have to give a reason that meets 2.11”
10. PETAPP VI:1263, lines 11-14 “...under Canon 2.11 we’ve got to give
grounds, on the record, for why Judge Potter reached a conclusion, he could

1 Recusal Order had already been sealed and the Recusal Order available to the
2 public had already been redacted pursuant to the minute order.¹⁷ Therefore, the
3
4 only evidence of the Court’s ruling is the minute order in this matter and the
5 discussion at the March 28, 2018 court hearing.¹⁸
6

7 ***B. Although completely unrelated to McGuire case, the Grasso stricken order***
8 ***(referenced in the Recusal Order) is filed on the McGuire Case record by***
9 ***Opposing Counsel.***

10 In the Matter of The McGuire Family Trust Dated October 18, 1991, Case
11 Number: P-17-090719-T (“*McGuire* case”), opposing counsel, Cary Colt Payne,
12 Esq. (“Mr. Payne”), attorney for Mary E. McGuire, filed the completely unrelated
13 *Grasso* stricken order onto the *McGuire* case record in order to gain a discovery
14 advantage and cast ALB, Ltd., in a negative light. Mr. Payne had obtained
15 information regarding the *Grasso* stricken order from Mark Hafer, Esq., counsel
16 for Jeffrey Grasso in the *Grasso* matter. The *McGuire* case was also before Judge
17 Potter. Notably, there were no heated exchanges between Anthony L. Barney, Esq.,
18 and Judge Potter in the *McGuire* case.
19
20
21

22 In attempting to provide an explanation for his citation to the completely,
23 unrelated *Grasso* stricken order, Mr. Payne indicated that “If I had got an affidavit
24
25
26

27 not keep the case. Like I said, ‘It’s canons of judicial ethics. It has to be in
28 the public record, something like this,’ you know.”

¹⁷ See PETAPP VIII:1704-1706.

1 from Mark Chaffin (phonetic) [Mark Hafer]¹⁹ who I talked to about this case and
2 he came in to testify and told you what happened in that case...”²⁰ then Mr. Payne
3
4 would have allegedly been able to show that he did not provide the *Grasso* stricken
5 order for an improper purpose and, thus, might have avoided NRCP 11 sanctions,
6
7 which were recommended by Probate Commissioner Wesley Yamashita
8 (hereinafter, “Probate Commissioner”). Mr. Payne was given a safe harbor for
9
10 almost three months to remove the stricken order in the *Grasso* Case from the
11 *McGuire* case record, yet he refused to remove the stricken order from the
12 *McGuire* case record.

13
14 As a result of Mr. Payne’s refusal to remove the unrelated *Grasso* stricken
15 order from the *McGuire* case record, the Probate Commissioner recommended
16
17 sanctions against Mr. Payne in the amount of four thousand five hundred dollars
18 (\$4,500.00) for his violation of NRCP 11.²¹ The Probate Commissioner recognized
19

20
21 ¹⁸ See PETAPP VI:1234 (minute order) and PETAPP VI:1235-1267 (March 28,
2018 hearing transcript).

22 ¹⁹ If one listens to the CD of the hearing, Cary Colt Payne, Esq., indicates that the
23 counsel that would provide an affidavit or testify as to what happened in the
24 *Grasso* Case is Mark Hafer, Esq. There is no Mark Chaffin, Esq., practicing in
25 Nevada according to www.nvbar.org. Mark Hafer, Esq., is the only attorney
named “Mark” in the *Grasso* Case.

26 ²⁰ PETAPP III:539, lines 5-7.

27 ²¹ PETAPP III:535, lines 18-20. Probate Commissioner Wesley Yamashita
28 explained to Mr. Payne, “...whether it be pleadings, whether it be discovery
matters, whether it be anything that is filed, it signed under Rule 11.”; See also
PETAPP III:540, lines 18-21 wherein Commissioner Yamashita stated, “I am

1 and reiterated to Mr. Payne that the firm of ALB, Ltd. had extended the courtesy to
2 allow Mr. Payne to voluntarily withdraw the offending citation before seeking
3 sanctions and that the stricken order was irrelevant to the case record, was without
4 basis in the McGuire matter, and meant to be harassing.²²
5

6
7 Mr. Payne then sought clarification from Judge Potter on February 6, 2018
8 in the *McGuire* case on whether sanctions should have been imposed for his
9 conduct. Three days after this court hearing, Judge Potter then filed his Recusal
10 Order on February 9, 2018, stating that he was recusing himself for bias he felt
11 towards ALB, Ltd. In the Recusal Order, Judge Potter improperly and incorrectly
12 cited to the information contained in the *Grasso* stricken order, attempting to
13 repeat various erroneous allegations which were never verified, caused the order to
14 be stricken in the first instance²³, and had already been withdrawn from the *Grasso*
15 court record.
16
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20
21 hereby going to by report and recommendation award the amount of \$3,500 of
22 attorney's fees and, in addition, I'm gonna require the payment of \$1,000 to the
23 Clark County Law Library as sanction for violation of Rule 11."

24 ²² PETAPP III:539, lines 22-23 and III:540, lines 14-15. On Pg. 539,
25 Commissioner Yamashita stated, "They [ALB, Ltd.] gave you a chance to pull it
26 off because it's [the stricken order] been removed." On Pg. 540, he then confirms
27 that Mr. Payne simply sought to harass opposing counsel stating, "You don't cite it
28 to the record. It's irrelevant to this record. It is nothing meant to be other than
harassing and without basis."

²³ See PETAPP I:90-91 wherein the Court acknowledges on I:91: "The Court heard
a motion to reconsider its Decision and Order of 3/29/17. This Court admits there
are errors in that document."

1 On April 23, 2018, Judge Elizabeth Gonzalez then reversed all sanctions
2 against Mr. Payne and **allowed the stricken *Grasso* order to remain on the**
3 ***McGuire* court record** and to be referenced therein, because the stricken order
4 was allegedly available to the public (despite her statements that she had no
5 interest in the stricken order as part of the *McGuire* case).
6
7

8 The ruling of Judge Gonzalez was as follows:
9

10 THE COURT: While the stricken order is not relevant to the proceedings
11 that are currently before the Court, the Court is not going to strike it...You
12 have a motion to strike Judge Potter's recusal order.

13 MR BARNEY: Yes. So you're leaving the previously stricken order on the
14 record in the unrelated matter?

15 THE COURT: It is in the briefing of this, which somebody may have to do
16 something about in Carson City some day. So I'm not striking it.²⁴
17

18 Therefore, the *Grasso* stricken order is back on the court record of the *McGuire*
19 case to be referenced at will despite its completely erroneous nature, which caused
20 it to be stricken in the original *Grasso* case by its original author, Judge Potter.
21

22 Furthermore, because of the due process violations with the false, erroneous
23 and disparaging language contained in the Recusal Order which also violates RCJC
24 2.11(C), ALB, Ltd. filed its Motion to Strike. No other party objected to the
25 Motion to Strike, yet Judge Elizabeth Gonzalez denied the Motion to Strike stating
26 the following:
27
28

²⁴ See PETAPP IV:1352, lines 23-25 and PETAPP IV:1353, lines 4-10.

1 THE COURT: I previously ruled on Case Number 99-G-020357 this
2 morning that I was not going to strike Judge Potter's language from his
3 order. His recusal order is important. Under the judicial canons a judge must
4 state with reasonably particularity the reasons for which they are recusing.
As the order is a recusal by Judge Potter, I am not going to strike that.²⁵

5 When asked if she would certify her orders on removing the *Grasso* stricken order
6 from the McGuire court record and her refusal to strike the Recusal Order from the
7 various court records, Judge Gonzalez further stated: "They're not certifiable,
8 Counsel. You've got to file a petition for extraordinary relief. They're writable
9 issues."²⁶

10
11
12 Judge Elizabeth Gonzalez's basis for not removing the Recusal Order from
13 the court records was based upon her incorrect reading of RCJC 2.11 (discussed
14 further below). Particularly, RCJC 2.11(A)(1) and the alleged need for a reason for
15 Judge Potter's recusal on the record was the basis for her denial of the Motion to
16 Strike, although such a basis is expressly prohibited pursuant to RCJC 2.11(C).
17
18

19 ***C. The Mencarelli Case and Reyes Case did not have "heated exchanges" as***
20 ***alleged by the Recusal Order.***

21 In the Matter of the Guardianship of the Person and Estate of Delford W.
22 Mencarelli, Case No. G-13-038863-A ("*Mencarelli Case*"), ALB, Ltd. represented
23 Terri Black against Helen Natko (the former guardian and opposing party) who
24
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26
27
28 ²⁵ PETAPP IV:1356, lines 8-14.

²⁶ PETAPP IV:1356, lines 22-24.

1 was convicted of two felony counts of elder exploitation and theft.²⁷ Terri's claims
2 and the Guardian's claims for her fees and attorney's fees were held in abeyance
3
4 pending the outcome of the criminal case.²⁸ After the conviction came down, Judge
5 Potter heard the petitions for the guardian's fees and attorney's fees, and Terri's
6
7 counterpetitions to bring her claims. The judge denied Terri the ability to bring her
8
9 claims filing two orders from the same hearing wherein the Court created an
10
11 arbitrary statute of limitations and denied Terri the ability to bring her claims
12
13 against the Guardian.²⁹ The matter is currently on appeal with the Nevada Supreme
14
15 Court.³⁰

16
17 The only exchange between Anthony L. Barney, Esq. and Judge Potter
18
19 where Judge Potter became angry, was when Mr. Barney respectfully questioned
20
21 Judge Potter's representation that all of the jurists in the *Mencarelli* Case had
22
23 knowledge of the felonious conduct of the guardian against Mr. Mencarelli and his
24
25 reasoning for denying reimbursement of fees.³¹ Further, Judge Potter refused to
26
27 reconsider the incongruent rulings between his two orders entered from the same
28
29 hearing, and simply told the parties to "let the Supreme Court handle it."³² This

25 ²⁷ See PETAPP I:96-98.

26 ²⁸ See PETAPP I:1-2.

27 ²⁹ See PET I:99-101, 235-243.

28 ³⁰ See PETAPP II:476, line 11-12.

29 ³¹ See PETAPP II:447-450, 481.

30 ³² PETAPP II:481, line 24.

1 was the extent of what could possibly be considered a “heated” exchange in the
2 *Mencarelli* case against ALB, Ltd., which was nothing more than a mere
3 questioning of the Judge Potter’s reasoning behind his rulings, which are now on
4 appeal.³³

5
6
7 In Case No. P-17-093692-T, In the Matter of Maria F. Reyes Living Trust
8 dated May 7, 2014 (“*Reyes Case*”), Zachary D. Holyoak, Esq., appeared on behalf
9 of ALB, Ltd. There were no “heated” exchanges in the *Reyes* case.
10

11 ***D. The Dosch Case was also a likely contributing factor to Judge Potter’s***
12 ***entry of the Recusal Order.***

13 In the *Dosch* matter, there was a forensic investigation into a trustee who
14 was found to have been engaged in self-dealing for which the Court appointed the
15 guardian of the person, Edis Ralene Dosch (“Ms. Dosch”) as also temporary
16 guardian of the estate.³⁴ Ms. Dosch attempted to perform her duties, but the Court’s
17 perceived “animosity” between an estranged brother seeking guardianship over the
18 Protected Person and Ms. Dosch who had been acting as the Protected Person’s
19 guardian for decades incited Judge Potter to unfairly attack Ms. Dosch and her
20 legal counsel, Tiffany S. Barney, Esq. (“Ms. Barney”). Ms. Dosch, through the
21 help of Ms. Barney, was successful at being appointment as General Guardian over
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28 ³³ See Nev. Sup. Ct. Case Nos. 74219 and 74384; PETAPP VII: 1561-1563.

³⁴ See PETAPP I:230-234.

1 the Estate on a permanent basis,³⁵ yet Judge Potter continued to be resistant to Ms.
2 Dosch and Ms. Barney and persisted in “heated” exchanges against Ms. Barney.
3
4 After the Recusal Order was entered, the *Dosch* case was reassigned to Judge
5 Vincent Ochoa (“Judge Ochoa”).
6

7 When Judge Ochoa was requested to strike the erroneous and disparaging
8 language in the Recusal Order, he would not rule on the matter, although there was
9 no opposition to the Motion to Strike, and instead, he requested the chief judge,
10 Judge Elizabeth Gonzalez (“Judge Gonzalez”) hear the matter.³⁶ Judge Gonzalez
11 heard the *Dosch* matter and, again, although there was no opposition to the motion,
12 she denied the motion to strike the erroneous and disparaging language reasoning
13 that RCJC 2.11(A)(1) required Judge Potter to put his reasons for recusal knowing
14 that his reason was for bias.³⁷
15
16
17

18 Judge Vincent Ochoa attempted to send the *Dosch* matter back to Judge
19 Potter despite ALB, Ltd., remaining as a judgment creditor and interested party in
20 the case. New legal counsel for Ms. Dosch filed the Recusal Order as Exhibit 2 to
21 their Objection to Order Transferring Matter to Judge Potter filed on May 21, 2018
22 (“Objection”). Therefore, the Recusal Order has been filed again on the court
23 record, which has a further negative impact on ALB, Ltd. It has been used and/or
24
25
26

27
28 ³⁵ See PETAPP V:971-978.

³⁶ See PETAPP VI:1295-1296.

1 referenced by other attorneys in correspondence and a Judgment Debtor's
2 Examination taken on June 13, 2018 in the *Dosch* case, in an attempt to cast ALB,
3 Ltd., in a negative light. Despite requests to remove the Recusal Order in every
4 case in which it was filed, ALB, Ltd. was denied its requested relief pursuant to an
5 incorrect reading and application of RCJC 2.11(A)(1).
6
7

8 ***E. Prior Writ Proceedings were filed but were denied without prejudice.***
9

10 On June 14, 2018, and again on December 1, 2018, a writ was filed on the
11 same issues herein. Each was denied without prejudice³⁸ due to the absence of case
12 documents necessary to understand the issues presented by the petitions. To correct
13 these omissions, all documents, including all three cases' related motion practice
14 specified in the prior denial orders, have been included in the Appendices, and
15 identified by case in each appendix cover sheet for the Court's review. The Grasso
16 stricken order and Judge Potter's February 2018 Recusal Order (Notice of Entry of
17 Order) referenced in the Appendices have been submitted under "proposed seal".
18 These are requested to be sealed to prevent further harm to ALB, Ltd., resulting
19 from further dissemination of the erroneous and false language contained in these
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26 ³⁷ See PETAPP VI:1373-1375.

27 ³⁸ See Nevada State Supreme Court Case Nos.: 76090, 76090-COA, 77614, 77614-
28 COA

1 orders during the pendency of the writ proceedings and any possible future ruling
2 of this Court.
3

4 **II. POINTS, LEGAL ARGUMENT, AND LEGAL AUTHORITY**

5 ***A. Writ Relief is appropriate because ALB, Ltd., has no other remedy, will be*** 6 ***irreparably harmed by the false, erroneous and disparaging statements*** 7 ***contained in the Grasso stricken order and Recusal Order.***

8 The U.S. Supreme Court mandates that "in order to ensure that the writ will
9 issue only in extraordinary circumstances [,] . . . a party seeking issuance [must]
10 have no other adequate means to attain the relief he desires." *Allied Chemical*
11 *Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35, 101 S. Ct. 188 (1980). An applicant for a
12 writ "must show both that there is a clear entitlement to the relief requested, and
13 that irreparable harm will likely occur if the writ is withheld." *In re United States*,
14 158 F.3d 26, 30 (1st Cir. 1998) (internal quotation marks omitted) (quoting *In re*
15 *Cargill, Inc.*, 66 F.3d 1256, 1260 (1st Cir. 1995)). Mandamus lies "to confine an
16 inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to
17 exercise its authority when it is its duty to do so." *Roche v. Evaporated Milk*
18 *Association*, 319 U.S. 21, 26, 63 S. Ct. 938 (1943). Courts also allow mandamus
19 when a district court has made a clear error of law. See *Schlagenhauf v. Holder*,
20 379 U.S. 104, 112, 85 S. Ct. 234 (1964); *Cipollone v. Liggett, Inc.*, 785 F.2d 1108,
21 1118 (3d Cir. 1986) citing *Sporck v. Peil*, 759 F.2d 312, 314 (3d Cir. 1985).
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1 In Nevada, a writ of mandamus will issue to compel the performance of an
2 act which the law requires as a duty resulting from an office, trust, or station, and
3 where there is no plain, speedy, and adequate remedy in the ordinary course of law.
4 See *Oxbow Constr. v. Eighth Jud. Dist. Ct.*, 335 P.3d 1234, 1238 (Nev. 2014);
5 *Hickey v. District Court*, 782 P.2d 1336 (Nev. 1989); and NRS 34.160. The
6 Nevada Supreme Court further stated “[a] writ of mandamus is available to, among
7 other things, ‘control an arbitrary or capricious exercise of discretion’” and is the
8 appropriate remedy to compel performance of a judicial act. See, *Oxbow Constr.*,
9 335 P.3d at 1238, citing *Int’l Game Tech., Inc., v. Second Judicial District Court*,
10 124 Nev. 193, 197 (2008). The Court is allowed to use its “discretion to consider
11 such writ petitions when “an important issue of law needs clarification and
12 considerations of sound judicial economy and administration militate in favor of
13 granting the petition.” See, *Oxbow Constr.*, 335 P.3d at 1238, citing *Int’l Game
14 Tech*, 124 Nev at 197-198.

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21 The Court may in its discretion treat a petition for writ of mandamus as one
22 for prohibition, or vice versa, or treat a notice of appeal interchangeably as a
23 Petition for a Writ. See, *Messner v. District Court*, 104 Nev. 759, 766 P.2d 1320
24 (1988); See, *In re Temporary Custody of Five Minors*, 105 Nev. 441, 777 P.2d 901
25 (1989). Both types of writs are intended to resolve legal, not factual disputes. See
26 *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981).
27
28

1 Therefore, if this Court believes a writ of prohibition is a more adequate legal
2 remedy, then Appellant requests the Court treat it as such.³⁹
3

4 Herein, Judge Gonzalez recognized that striking the Grasso stricken order
5 from another court record and striking the Recusal Order would require an appeal
6 to the appellate courts.⁴⁰ Writ relief is entirely appropriate in this matter, because
7 there is no other remedy and ALB, Ltd. will be irreparably harmed by 1) the false,
8 erroneous and disparaging statements contained in the *Grasso* stricken order
9 allowed to remain on the *McGuire* court record in Case # P-17-090719-T, and 2)
10 the false, erroneous and disparaging statements contained in the Recusal Order that
11 was filed in Case Nos. 99-G-0202357, P-17-090719-T, G-16-043377-A.
12
13
14

15 ***B. The Grasso stricken order was immaterial to the McGuire case record, yet***
16 ***the Court would not afford due process to ALB, Ltd., believing that the***
17 ***appellate court should rule and that this was a writable issue.***

18 NRCP 12(f) provides the following:
19

20
21 ³⁹ While Appellants believe a writ of mandamus is appropriate, this Court may
22 believe a writ of prohibition is more appropriate for prohibiting the use of
23 enforcement orders effectuating an underlying order that was issued without
24 jurisdiction. See *Golden v. Averill*, 31 Nev. 250, 101 P. 1021 (1909). Additionally,
25 the purpose of a writ of prohibition is to prevent courts from transcending their
26 jurisdiction, and these types of writs are issued to arrest the proceedings of a
27 district court exercising its judicial functions when those proceedings are in excess
28 of the jurisdiction of that court and when there is no plain, speedy, and adequate
remedy in the course of law. See *Guerin v. Guerin*, 114 Nev. 127, 953 P.2d 716
(1998); *Gladys Baker Olsen Family Trust v. District Court*, 110 Nev. 548, 874
P.2d 778 (1994); NRS 34.320; NRS 34.330.

⁴⁰ PETAPP IV:1352, lines 8-10 and PETAPP IV:1356, lines 22-24.

1 Upon motion made by a party before responding to a pleading or, if no
2 responsive pleading is permitted by these rules, upon motion made by a
3 party within 20 days after the service of the pleading upon the party or upon
4 the court's own initiative at any time, the court may order stricken from any
5 pleading any insufficient defense or any redundant, immaterial, impertinent,
or scandalous matter.

6 Herein, Mr. Payne filed onto the record in the *McGuire* case, the *Grasso* stricken
7 order that he had received from Mark Hafer, Esq, counsel for Jeffrey Grasso in the
8 *Grasso* case. The *Grasso* stricken order had already been stricken due to the
9 numerous errors it contained in the *Grasso* matter; therefore, the *Grasso* stricken
10 order was "immaterial, impertinent" to the *McGuire* matter and could even be
11 considered "scandalous" considering its erroneous nature. Judge Potter admitted
12 that the *Grasso* stricken order contained errors.⁴¹

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16 Thus, ALB, Ltd., filed its motion to strike the *Grasso* stricken order from the
17 *McGuire* court record as well as the Recusal Order. In denying the motion to strike
18 the *Grasso* stricken order from the *McGuire* court record, Judge Gonzalez failed to
19 consider the merits of why the *Grasso* stricken order was immaterial, impertinent
20 or scandalous and, further, provided no reasons or factual findings. She simply
21 held that "While the stricken order is **not relevant** to the proceedings that are
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27 ⁴¹ See PETAPP I:91 wherein the Court acknowledges on: "The Court heard a
28 motion to reconsider its Decision and Order of 3/29/17. This Court admits there
are errors in that document."

1 currently before the Court, the Court is not going to strike it.”⁴² She then noted that
2 “somebody may have to do something about in Carson City some day. So I’m not
3 striking it.”⁴³

4
5 In other words, despite the immaterial, impertinent and scandalous material
6 that was placed upon the court record without any foundation, ALB, Ltd., was now
7 going to have to request the appellate court for relief, because the Eighth Judicial
8 District Court (“EJDC”) would not provide a remedy. Leaving a grossly erroneous
9 order from one case on another case record is a violation of Anthony L. Barney,
10 due process rights as explained further below and should be removed from the
11 McGuire case record.

12
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15 ***C. The Grasso stricken order and Recusal Order is based upon false and***
16 ***erroneous statements and to allow it to remain on multiple records is a***
17 ***clear violation of Anthony L. Barney, Ltd’s due process rights, because of***
18 ***the lack of notice or the opportunity to be heard and rebut the false and***
19 ***erroneous statements.***

20 The United States Supreme Court held that “[p]rocedural due process
21 imposes constraints on governmental decisions which deprive individuals of
22 ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of
23 the Fifth or Fourteenth Amendment.” *Mathews v. Eldridge*, 96 S. Ct. 893, 901
24 (1976). It further mandated “the fundamental requirement of due process is the
25

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27
28 ⁴² PETAPP VI:1351, lines 23-25.

⁴³ PETAPP VI:1352, lines 8-10.

1 opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.* at
2 902 (quoting, *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14
3 L.Ed.2d 62 (1965)). At a minimum, due process requires “some kind of notice and
4 ... some kind of hearing.” *Goss v. Lopez*, 419 U.S. 565, 579, 95 S.Ct. 729, 738
5 (1975), See also, *Zinermon v. Burch*, 110 S. Ct. 975, 984 (1990) (The
6 “Constitution requires some kind of a hearing before the State deprives a person of
7 liberty or property.”).

8
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10
11 The Fourteenth Amendment to the United States Constitution prohibits the
12 deprivation of life, liberty, or property, without due process of law; and, likewise,
13 Article 1, Section 8 of the Nevada Constitution mandates that “No person shall be
14 deprived of life, liberty, or property, without due process of law.” The Nevada
15 Supreme Court indicated that procedural due process requires that parties receive
16 “notice and an opportunity to be heard.” *Eureka Cty. v. Seventh Judicial Dist.*
17 *Court*, 407 P.3d 755, 758 (Nev. 2017).

18
19
20
21 Herein, the *Grasso* stricken order was placed upon another case record and
22 the Recusal Orders were placed upon multiple case records without notice and
23 without the opportunity for ALB, Ltd., to meaningfully defend itself from the
24 actions, claims and allegations contained in these documents. ALB, Ltd.’s only
25 recourse was to file a motion to strike as a result of the lack of due process; in that
26 the lack of notice or opportunity to correct statements or otherwise defend itself
27
28

1 from the statements being made therein, and being used against ALB, Ltd., to
2 further the intentions of an opposing party in the *McGuire* case and, a biased judge,
3
4 Judge Potter in the *McGuire, Dosch* and *Grasso* case.

5 ALB, Ltd., filed its motions to strike on February 12, 2018 in the McGuire
6 case, and February 21, 2018 in the *Grasso* and *Dosch* cases.⁴⁴ The motions were
7 denied based upon a lack of case law (*Grasso* stricken order) or based upon an
8 erroneous reading of RCJC 2.11(C) (Recusal Order) further causing a denial of due
9 process to ALB, Ltd.⁴⁵ The stricken *Grasso* Order and Recusal Order must be
10 stricken from the various case records to correct this lack of due process.
11
12

13
14 ***D. Judge Potter’s stated bias in the Recusal Order not only violates due***
15 ***process but several judicial canons and must be stricken.***

16 As it particularly pertains to the Recusal Order, an “impartial decision maker
17 is essential” to due process. *Goldberg v. Kelly*, 397 U.S. 254, 271, 90 S. Ct. 1011,
18 1022 (1970). Due process demands that an independent judge is to decide matters
19 presented to a tribunal and do so justly and fairly, so as not to bring the judicial
20 office in disrepute. *State v. Allen*, 2010 WI 10, P95, 322 Wis. 2d 372, 409, 778
21 N.W.2d 863, 882, 2010 Wisc. LEXIS 10, *55-57; See also *In re Inquiry*
22 *Concerning a Judge (Totten)*, 365 N.C. 458, 459, 722 S.E.2d 783, 783, 2012 N.C.

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⁴⁴ PETAPP IV:811-908 (*McGuire*), 910-934 (*Dosch*), 935-959 (*Grasso*).

1 LEXIS 128, *1 (Judge was censured for entering an order without a hearing or
2 allowing counsel to argue the issues).
3

4 Due process guarantees “an absence of actual bias” on the part of a judge
5 and it encompasses the “outer boundaries of judicial disqualifications” while many
6 questions of recusal “are addressed by more stringent and detailed ethical rules...”
7 *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 and 1908 (2016). States may
8 choose to "adopt recusal standards more rigorous than due process requires."
9 *Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 889 (2009). Nevada has
10 addressed further procedural due process guarantees through its RCJC. In fact,
11 Revised Code of Judicial Conduct (“RCJC”) 2.6 provides that, “A judge shall
12 accord to **every person** who has a legal interest in a proceeding, **or that person’s**
13 **lawyer**, the right to be heard according to the law.” (Emphasis added).
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18 Herein, the Recusal Order including the false, erroneous and disparaging
19 statements was issued without notice to litigants and without Anthony L. Barney,
20 Ltd’s right to be heard on the matter and in violation of RCJC 2.11(C). The
21 Recusal Order exceeded the limits of due process and its jurisdiction by discussing
22 reasons for bias and recusal in contravention of RCJC 2.11(C). When the Motions
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27 ⁴⁵ PETAPP VIII:1630-1632,1636-1638,1643-1649 (June Orders); PETAPP VI:
28 1234 (March 28, 2018 minute order) and PETAPP VI:1235-1267 (March 28, 2018
hearing transcript). See also Footnote 14.

1 to Strike were filed, ALB, Ltd.'s requested relief was denied based upon RCJC
2 2.11(A)(1)⁴⁶, which states:
3

4 A judge shall disqualify himself or herself in any proceeding in which the
5 judge's impartiality might reasonably be questioned, including but not
6 limited to the following circumstances: (1) The judge has a personal bias or
7 prejudice concerning a party or a party's lawyer, or personal knowledge of
8 facts that are in dispute in the proceeding.

9 Notably, RCJC 2.11(A)(1) does not require that a judge include in a recusal order
10 the reasons for the recusal. In fact, RCJC 2.11(C) specifically prohibits it when
11 there is bias or prejudice:

12 (C) A judge subject to disqualification under this Rule, **other than for bias**
13 **or prejudice under paragraph (A)(1)**, may disclose on the record the basis
14 of the judge's disqualification and may ask the parties and their lawyers to
15 consider, outside the presence of the judge and court staff, court officials and
16 others subject to the judge's direction and control, whether to waive
17 disqualification. If, following the disclosure, the parties and lawyers agree,
18 without participation by the judge or court staff, court officials and others
19 subject to the judge's direction and control, that the judge should not be
20 disqualified, the judge may participate in the proceeding. The agreement
21 shall be incorporated into the record of the proceeding. (Emphasis added).

22 RCJC 2.11(c) guards due process especially when the basis for recusal or
23 disqualification involves bias or prejudice.

24 Instead of simply entering his recusal as all biased judges are required to do
25 under RCJC 2.11(A)(1), Judge Potter felt constrained to promote his bias in favor
26 of the opposing parties and against ALB, Ltd. and their clients, by placing reasons
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28 ⁴⁶ See Footnote 43 above.

1 on the record for his bias in his Recusal Order.⁴⁷ In so doing, Judge Potter
2 contravened the procedural due process rights of the parties, violated RCJC
3 2.11(C), and chose to become an advocate for opposing counsel and his clients.
4 The minute order by Judge Sturman and the Orders issued thereafter by Judge
5 Gonzalez further sanctioned violation of the RCJC 2.11(C) by finding that Judge
6 Potter's orders were permissible despite the exception set forth in RCJC 2.11(C)
7 further violating procedural due process for the litigants and their counsel, ALB,
8 Ltd.⁴⁸

12 Additionally, RCJC 2.3 requires a judge to perform his or her duties without
13 bias or prejudice and refrain from harassment based upon bias or prejudice.
14 Ironically, the Recusal Order acted to contravene RCJC 2.3 and it manifests bias,
15 prejudice, and further impugns the clients of and the attorneys at ALB, Ltd. with
16 unnoticed and unfounded allegations. The Recusal Order was a vehicle to impugn
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21 ⁴⁷ Notably, Judge Potter also inferred accusations of fraud and negligence;
22 referring the *Grasso* stricken order that he'd already ordered to be removed from
23 the record. If he truly believed that ALB, Ltd. was guilty of fraud, Judge Potter
24 had a duty to refer the law firm of ALB, Ltd. to the Nevada State Bar or the
25 appropriate authorities pursuant to RCJC 2.15 (B) and (D). Either Judge Potter
26 violated his duty under RCJC 2.15 (B) and (D) or he did not have proper grounds
27 to accuse the firm of ALB, Ltd. of fraud. To date, no complaint has been made by
28 Judge Potter regarding his purported allegation of fraud.

⁴⁸ PETAPP VIII:1630-1632,1636-1638,1643-1649 (June Orders); PETAPP
VI:1234 (March 28, 2018 minute order) and PETAPP VI:1235-1267 (March 28,
2018 hearing transcript).

1 and manifest further bias and prejudice toward ALB, Ltd. and their clients in
2 violation of RCJC 2.3(B).
3

4 State courts and federal circuit courts, including the Ninth Circuit have taken
5 the position and it appears the Nevada Supreme Court has taken the position that,
6 “Once a judge has disqualified himself, he or she may enter no further orders in the
7 case.” *Moody v. Simmons*, 858 F.2d 137, 143, 1988 U.S. App. LEXIS 12884, *18;
8 *Arnold v. Eastern Airlines, Inc.*, 712 F.2d 899 (4th Cir. 1983); *Stringer v. United*
9 *States*, 223 F.2d 947 (9th Cir. 1956), *In re A Writ of Prohibition Or in the*
10 *Alternative for a Writ of Mandamus*, 920 P.2d 491, 502, 1996 Nev. LEXIS 1545,
11 *41. A disqualified judge is prohibited from giving unsolicited advice to another
12 judicial officer on how to decide a case. *Gubler v. Commission on Judicial*
13 *Performance*, 688 P.2d 551, 567-68 (1984). The recused or disqualified judge is
14 limited to performing ministerial duties necessary to transfer the case to another
15 judge (including the entering of "housekeeping" orders). *In re Cement Antitrust*
16 *Litigation*, 673 F.2d 1020, 1024-25 (9th Cir. 1982); *Application of Scott*, 379 F.
17 Supp. 622, 624 (S.D.Tx. 1974). The Third Circuit Federal Court of Appeals held,
18 “**We conclude that orders...impugning counsel are too substantial to be**
19 **considered mere "housekeeping."** *Moody v. Simmons*, 858 F.2d at 143
20 (Emphasis added); See also *Blaine Equip. Co. v. State*, 122 Nev. 860, 865 (2006)
21 (regarding precedential value).
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1 Herein, the Recusal Order constitutes the issuance of an order by Judge
2 Potter declaring bias against ALB, Ltd., and unnecessarily impugns both ALB,
3 Ltd., and its attorneys without notice and a right to be heard in further
4 contravention of RCJC 2.11(C) and 2.3(B). The Recusal Order also potentially
5 provides unsolicited and prohibited advice to other judicial officers regarding
6 reasons for recusal despite no request from any party for his recusal.
7

8
9 Lastly, RCJC 2.6 (A) states in pertinent part, “A judge shall accord to every
10 person who has a legal interest in a proceeding, or that person’s lawyer, the right to
11 be heard according to law.” The law firm of ALB, Ltd., and its clients were not
12 given proper notice, or an opportunity to be heard, before the Recusal Order based
13 upon bias was placed on various court records. There were no other remedies to
14 correct the Recusal Order other than to file the Motion to Strike and, while the
15 Motion was unopposed, Judge Gonzalez refused to strike the offending language
16 from the court record.
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18 After hearing the Motion to Strike, Judge Gonzalez held that,
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21 IT IS HEREBY FOUND that Judge William Potter was under no obligation
22 to notice a hearing for the parties to present argument or be heard prior to
23 issuing its sua sponte order on February 9, 2018 (“recusal order”) [...]

24 IT IS FURTHER FOUND that this Court does not rule on the truthfulness of
25 the statements made by Judge William Potter in his recusal order, but only
26 that these statements were made as the basis upon which Judge William
27 Potter has chosen to base his recusal of all cases involving the law firm of
28

1 ALB, Ltd. pursuant to Revised Nevada Code of Judicial Conduct
2 2.11(A)(1).⁴⁹

3 Unfortunately, Judge Gonzalez simply ignored RCJC 2.11(C), allowing the due
4 process safeguard contained in RCJC 2.11(C) to be infringed.
5

6 In the *Grasso* matter, Judge Sturman redacted some of the erroneous
7 language contained in the Recusal Order but allowed the language of bias to
8 remain on the record pursuant to an incorrect reading of RCJC 2.11(A). The
9 language of bias, however, should be removed entirely from the correct record
10 because it still violates RCJC 2.11(C). ALB, Ltd., requests that the Recusal Order
11 be stricken from all cases in which it was entered or filed.
12
13

14 III. CONCLUSION

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16 RCJC 2.11(C) and ALB, Ltd.'s procedural due process rights prohibited
17 Judge Potter from making statements which formed the basis of his bias and
18 prejudice in which he was recusing himself. Judge Potter's Recusal Order violated
19 procedural due process and its related judicial canon at RCJC 2.6. Judge Potter's
20 statements in the Recusal Order manifested bias, prejudice, and further impugned
21 the clients and their attorneys at ALB, Ltd. in violation of due process and RCJC
22 2.3.
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28 ⁴⁹ See PETAPP VI: 1374, 1377.

1 Likewise, a stricken order from another case filed and left on another
2 unrelated court record to be cited at will, is also a violation of ALB, Ltd.’s due
3 process rights. A writ, therefore, is the only means to remedy this legal error.⁵⁰

4
5 As can be seen by the references to the *Grasso* stricken order in the *McGuire*
6 case, which has caused extensive attorney’s fees and costs in litigation, the rights
7 of the litigants and their attorneys at ALB, Ltd. continue to be assailed. The harm
8 that results is found in the extensive attorney’s fees and costs that must be
9 expended to clear up the court records, the negative effect on the litigants’ claims
10 (referring to them as “litigious”) and the potential for the Recusal Order to be used
11 for possible unfair subterfuge, discipline, or for possible sanctions in other matters.
12 It casts ALB, Ltd., in a false light and has, unfortunately, been used and referenced
13 by other attorneys against ALB, Ltd., to attempt to cast its attorneys in a negative
14 light. The current and future use of a false, erroneous, and disparaging orders (the
15 *Grasso* stricken order and Recusal Order) in other cases unfairly prejudices ALB,
16 Ltd. and its clients.

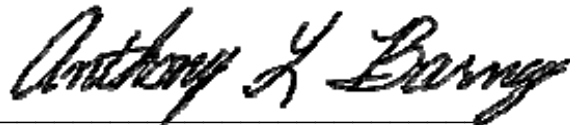
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18 ALB, Ltd., requests the Court reverse Judge Gonzalez’s June Orders and
19 Judge Sturman’s minute Order as a matter of law, which violate procedural due
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26 ⁵⁰ Judge Gonzalez recognized that the stricken order would have to be decided in
27 Carson City [or through appellate review] and denied the oral motion to certify this
28 order for immediate appellate review, indicating writ relief was the appropriate
remedy. See PETAPP VI: 1375, 1378.

1 process and its related judicial canons at RCJC 2.11(C), RCJC 2.3, and RCJC 2.6,
2 and grant the Motions to Strike. As it pertains to the Recusal Order, both EJDCs
3 erred as a matter of law to the extent that they held that RCJC 2.11(A)(1) permitted
4 a stated basis for recusal for bias upon the court record in light of the language of
5 RCJC 2.11(C). ALB, Ltd. requests that this Court strike the Grasso stricken order
6 from the McGuire Case (P-17-090719-T and strike the Recusal Order from 99-G-
7 0202357, P-17-090719-T, and G-16-043377-A and from the Objection to Order
8 Transferring Matter to Judge Potter filed in the EJDC Case Number on May 21,
9 2018 in Case No. 99-G-020357 (“Objection”), where it was filed as Exhibit 2.
10 ALB, Ltd., also requests any further and proper relief that may be warranted in this
11 matter in light of the EJDC’s contravention of its procedural due process rights and
12 related violations of the RCJC.
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18 DATED this 30th day of May, 2019.

19 Respectfully Submitted,
20 ANTHONY L. BARNEY, LTD.

21 

22 Anthony L. Barney, Esq.
23 Nevada Bar No. 8366
24 3317 W. Charleston Blvd., Suite B
25 Las Vegas, NV 89102
26 Telephone: (702) 438-7878
27 Facsimile: (702) 259-1116
28 office@anthonybarney.com
Attorney for Anthony L. Barney, Ltd.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a
3 party to this action. I further certify that on the 30th day of May, 2019, I served the
4 foregoing **PETITION FOR WRIT OF MANDAMUS** by first class US mail,
5
6 postage prepaid, upon the following persons or entities:
7
8

9
10 Judge Elizabeth Gonzalez
11 Department
12 Regional Justice Center
13 200 Lewis Ave.
14 Las Vegas, NV 89155

Judge Vincent Ochoa
Department S
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

15 Judge William Potter
16 Department M
17 Regional Justice Center
18 200 Lewis Ave.
19 Las Vegas, NV 89155

Judge Gloria Sturman
Department 26
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

20
21 Jim Berchtold, Esq.
22 Legal Aid Center of Southern Nevada
23 725 E. Charleston Blvd.
24 Las Vegas, NV 89104
25 *Attorney for Garrett Dosch, Real Party
26 in Interest*

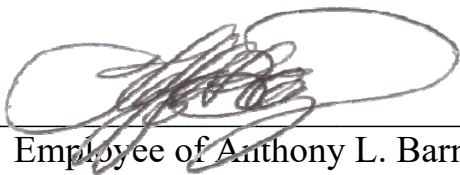
Dara J. Goldsmith, Esq.
Goldsmith & Guymon
2055 Village Center Circle
Las Vegas, NV 89134
*Attorney for Giulian Grasso, Real Party
in Interest*

27 ///

28 ///

1 Elizabeth Brickfield, Esq.
2 Dickinson Wright
3 8363 West Sunset Road, Suite 200
4 Las Vegas, NV 89113
5 *Guardian ad Litem for Garrett Dosch,
6 Real Party in Interest*

Cary C. Payne, Esq
700 South 8th Street,
Las Vegas, NV 89101
*Attorney for Mary McGuire, Trustee of
the McGuire Family Trust, Real Party
in Interest*

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11 _____
Employee of Anthony L. Barney, Ltd.

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